

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 3, 2016**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2015AP1271-CR**

**Cir. Ct. No. 2013CM440**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JOHN D. ARTHUR GRIFFIN,**

**DEFENDANT-APPELLANT.**

---

APPEAL from a judgment of the circuit court for Rock County:  
ROBERT DE CHAMBEAU, Judge. *Affirmed.*

¶1 KLOPPENBURG, P.J.<sup>1</sup> John Griffin appeals a judgment of conviction for carrying a concealed weapon in violation of WIS. STAT.

---

<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2013-14).

§ 941.23(2) (2011-12).<sup>2</sup> Griffin argues that the circuit court erred in denying his motion to suppress evidence obtained as a result of an investigatory stop because the arresting officer did not have the requisite reasonable suspicion: (1) to conduct the initial investigatory stop, and (2) to extend his detention after dispatch informed the officer that the suspect vehicle had a different state license plate. For the reasons set forth below, I reject Griffin's arguments and affirm.

### **BACKGROUND**

¶2 Griffin was charged with one misdemeanor count of carrying a concealed weapon in violation of WIS. STAT. § 941.23(2). The following is a summary of the undisputed facts leading up to Griffin's arrest.

¶3 At approximately 2:00 a.m. on January 20, 2013, South Beloit, Illinois, Police Officer Paul Reed heard a dispatch from the Beloit, Wisconsin, Police Department regarding a shooting or shots fired at the Silver Slipper Saloon in Beloit.<sup>3</sup> The dispatch described the vehicle suspected of involvement in the shooting as being a silver Chevrolet Impala, and reported that the vehicle fled the scene.

¶4 Officer Reed was in a fully marked squad car parked on the side of the road in South Beloit when, shortly after hearing the dispatch, he observed a silver Chevrolet Impala drive by. Officer Reed began to follow the vehicle, which

---

<sup>2</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

<sup>3</sup> South Beloit, Illinois, is just over the state line from Beloit in Rock County, Wisconsin.

then stopped at a traffic light at the intersection of Highway 251 and Prairieville Road.

¶5 A passenger exited the rear driver's side of the vehicle. Officer Reed exited his vehicle, drew his weapon, and told the passenger to get back in the vehicle. The passenger walked around the front of the vehicle and got into the front passenger seat of the vehicle. The traffic light turned green and the vehicle began to drive away. Officer Reed then activated his emergency lights and initiated the traffic stop.

¶6 Prior to approaching the vehicle, Officer Reed heard dispatch stating that the suspect vehicle possibly had an Iowa registration and was possibly a rental vehicle. Officer Reed observed that the vehicle he stopped had an Illinois registration, and he decided to approach the vehicle and make contact with the driver. Officer Reed obtained the driver's identification, and asked why the passenger had exited the vehicle at a red light. The passenger indicated that he was cramped in the back. Officer Reed then went back to his squad car to check the driver's identification.

¶7 Officer Sanders from the South Beloit Police Department arrived at the traffic stop as Officer Reed was returning to his squad car. Officer Reed contacted the Rock County Dispatch Center and was advised that, at that time, they believed the suspect vehicle was a silver Impala with Iowa registration and possibly a rental. Officer Reed indicated to dispatch that was not the vehicle he had stopped.

¶8 Officer Reed told Officer Sanders that he was going to let the vehicle go but that he wanted to ask the driver if there were any weapons in the vehicle and if he could search for weapons. According to Officer Reed, he could

not see the other occupants in the vehicle due to its windows being tinted dark. Therefore, he asked the driver John Griffin to step out of the vehicle so that they could speak. Griffin exited the vehicle and as they were walking from the front to the back of the vehicle, Officer Sanders announced that there was a gun in the pocket behind the passenger seat of the car. The officers arrested Griffin and the occupants of the vehicle for violation of Illinois law, which at that time prohibited concealed carry.

¶9 As a result of evidence obtained after his arrest, including physical evidence and admissions, Griffin was charged with violation of Wisconsin’s law prohibiting concealed carry. *See* WIS. STAT. § 941.23(2). Griffin filed a motion to suppress evidence obtained as a result of the traffic stop.

¶10 After a hearing at which Officer Reed testified, the circuit court held that Officer Reed had “reasonable suspicion ... to stop the vehicle.” The court found that Officer Sanders “saw the gun through the open window [and] [u]nder the plain view doctrine ... [the officer had] a right to be where he was when he saw it, and, as a result, they arrested these gentlemen.” The court further found that “under the facts and circumstances and the totality of the circumstances ... the officer had a right to do what he did.” Accordingly, the circuit court denied Griffin’s motion to suppress evidence.

## DISCUSSION

¶11 Griffin argues that the circuit court erred in denying his motion to suppress evidence because Officer Reed did not have the requisite reasonable suspicion: (1) to conduct the initial investigatory stop, and (2) to extend his detention after dispatch informed Officer Reed that the suspect vehicle had a different state registration. As I explain below, the traffic stop was lawful and,

therefore, the circuit court properly denied Griffin’s motion to suppress evidence obtained from the traffic stop.

#### *A. Standard of Review*

¶12 This court analyzes the denial of a suppression motion under a two-part standard of review: we uphold the circuit court’s findings of fact unless they are clearly erroneous, and we independently review whether those facts warrant suppression. *State v. Conner*, 2012 WI App 105, ¶15, 344 Wis. 2d 233, 821 N.W.2d 267. “Whether there is probable cause or reasonable suspicion to stop a vehicle is a question of constitutional fact.” *State v. Popke*, 2009 WI 37, ¶10, 317 Wis. 2d 118, 765 N.W.2d 569. The ultimate question of “whether the facts as found by the [circuit] court meet the constitutional standard” is reviewed de novo. *State v. Hindsley*, 2000 WI App 130, ¶22, 237 Wis. 2d 358, 614 N.W.2d 48.

#### *B. Reasonable Suspicion to Support Initial Traffic Stop*

¶13 The Fourth Amendment of the United States Constitution and Article I, Section 11 of the Wisconsin Constitution offer protection against unreasonable searches and seizures.<sup>4</sup> “The temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a ‘seizure’ of ‘persons’ within the meaning of the

---

<sup>4</sup> The Fourth Amendment of the United States Constitution states, “The right of the people to be secure in their persons ... against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause ....” Article I, Section 11 of the Wisconsin Constitution provides, “The right of the people to be secure in their persons ... against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause ....”

Fourth Amendment.” *Popke*, 317 Wis. 2d 118, ¶11 (quoted source omitted). If the seizure is unreasonable and therefore unconstitutional, then evidence obtained as a result is generally inadmissible. *State v. Scull*, 2015WI 22, ¶20, 361 Wis. 2d 288, 862 N.W.2d 562.

¶14 “If a reasonable inference of unlawful conduct can be objectively discerned, the officers may temporarily detain the individual to investigate, notwithstanding the existence of innocent inference which could be drawn.” *State v. Young*, 212 Wis. 2d 417, 430, 569 N.W.2d 84 (Ct. App. 1997). “The question of what constitutes reasonableness is a common sense test. What would a reasonable police officer reasonably suspect in light of his or her training and experience.” *State v. Waldner*, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996) (citations omitted). “The reasonableness of a stop is determined based on the totality of the facts and circumstances.” *State v. Post*, 2007 WI 60, ¶13, 301 Wis. 2d 1, 733 N.W.2d 634.

¶15 In this case, there are no factual disputes arising out of Officer Reed’s testimony. Griffin’s sole basis for contending that there was no reasonable suspicion to conduct the initial traffic stop was that Officer Reed “overheard radio traffic indic[a]ting that the suspect vehicle had Iowa registration [and] Mr. Griffin’s vehicle had Illinois registration.”

¶16 However, Griffin ignores the totality of the circumstances supporting Officer Reed’s reasonable suspicion that the vehicle driven by Griffin was the suspect vehicle from the nearby shooting. The circuit court properly considered the following facts in its totality of the circumstances analysis:

Officer Reed was given a dispatch that there was a ... silver Chevy Impala that was possibly involved in the shooting. This car [Griffin’s] matched that vehicle very closely. It

was two a.m. in the morning in an isolated area, which happened to have a stoplight. The officer, when he was waiting there and taking a look at them, observed that [a passenger] got out and ran around the car. That obviously drew his attention. The purpose of *Terry* and what *Terry* really says is you've got to take a view of the common sense reasonableness of what occurred one way or the other. And I think this officer under the facts and circumstances did what he should have done and what I would hope he would do as a police officer and stop the car and get some identification.

The fact that Officer Reed heard on the radio that the suspect registration may be different is one fact that should be considered, but it is not a dispositive fact that automatically renders the stop unreasonable. Rather, the totality of the facts and circumstances before Officer Reed at the moment of the investigatory stop, as found by the circuit court above, was sufficient to give rise to reasonable suspicion that this vehicle was the suspect vehicle from the shooting.

### *C. Reasonable Suspicion for Continued Detention*

¶17 Griffin argues that even if there was reasonable suspicion supporting the initial stop, “the purpose of the investigatory stop was completed once dispatch advised Officer Reed that this was not the vehicle involved in the shooting.” Griffin contends that when Officer Reed asked Griffin to step out of the vehicle to talk, “he extended the stop without having sufficient articulable facts to do so.” Griffin’s argument fails, however, because he wrongly assumes that the information from dispatch—that the suspect vehicle had a different state registration—rendered the investigation complete and, therefore, Officer Reed’s actions thereafter constituted a separate investigation. Rather, it is apparent from the evidence that Officer Reed intended to briefly continue the detention to further investigate when he intended to ask Griffin to give voluntary consent to a search of the vehicle. As I proceed to explain, I conclude the totality of the facts and

circumstances gave rise to sufficient reasonable suspicion to briefly continue the detention here.

¶18 “[O]nce stopped, the driver may be asked questions reasonably related to the nature of the stop ....” *State v. Betow*, 226 Wis. 2d 90, 93, 593 N.W.2d 499 (Ct. App. 1999). “A seizure becomes unreasonable when the incremental liberty intrusion resulting from the investigation supersedes the public interest served by the investigation. In sum, an unconstitutional continuation of a once lawful seizure can occur when the extension of time for that needed to satisfy the original concern that caused the stop becomes unreasonable or when the means used to continue the seizure becomes unreasonable, both of which are evaluated under the totality of the circumstances presented.” *State v. Arias*, 2008 WI 84, ¶38, 311 Wis. 2d 358, 752 N.W.2d 748 (citation omitted).

¶19 Under the totality of the facts and circumstances here, neither the extension of time that Officer Reed took to satisfy his original concern that caused the stop, nor the means he used to continue his investigation, were unreasonable. The circuit court found that Officer Reed was still concerned after talking to dispatch, and that Officer Reed’s intent after speaking to dispatch was: “I’m just gonna go up and ask whether they’ll let me take a look in the car, because I’m not quite sure, I’m a little hesitant over these [tinted] windows and the activities that took place.” The record supports the circuit court’s finding that Officer Reed intended only to briefly continue the detention to further investigate his original concern, that the car was the suspect vehicle from the shooting, by asking whether he could search the vehicle before returning Griffin’s identification. Officer Reed testified that he thought that “there’s a lot going on in the parking lot of a bar especially after a shooting,” and that he “believed ... the dispatcher had incorrect information” as to the vehicle registration. Officer Reed, therefore, told Officer



Sanders that he “just wanted to go up and make sure there [were] no weapons in the car, and [that he] was going to ask the driver for consent to search the car.”

¶20 The circuit court also found that the vehicle’s windows were tinted dark and one could not see into the vehicle at that place and time. The record supports the circuit court’s finding. Officer Reed testified that he could not see the other occupants in the vehicle due to its windows being tinted dark. Thus, Officer Reed asked Griffin to step out of the vehicle so that they could speak.

¶21 Given the totality of the circumstances here, including the facts prior to Officer Reed’s conversation with dispatch about the vehicle’s Illinois versus Iowa registration, it was objectively reasonable for Officer Reed to ask Griffin to step out of the vehicle and to briefly continue the detention to further investigate by asking Griffin to voluntarily consent to a search of the vehicle. Unfortunately for Griffin, in the short time that it took for Officer Reed and Griffin to walk from the front to the back of the vehicle, and before Officer Reed asked to search the vehicle, Officer Sanders observed the concealed weapon in plain view through an opened window. Officer Sanders’ observation started a new investigation for a violation of the Illinois law prohibiting concealed carry, which ultimately led to evidence supporting the charge for violation of WIS. STAT. § 941.23(2).

## CONCLUSION

¶22 For the reasons set forth above, I reject Griffin’s arguments that the circuit court erred in denying his motion to suppress evidence, and, therefore, I affirm the judgment.

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE  
809.23(1)(b)4. (2013-14).

